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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS**

JOSHUA GRAY,

Plaintiffs,

V.

**IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC,**

Defendant

Case No. 1:19-cv-00008

**DEFENDANT'S RESPONSE TO
ORDER TO SHOW CAUSE AGAINST
IPI AND HOWYO CHI**

Hearing Date: April 30, 2024

Hearing Time: 10:00 AM

Judge: Hon. Ramona V. Manglona

**DEFENDANTS' MEMORANDUM OF LAW IN RESPONSE
TO ORDER TO SHOW CAUSE AGAINST IPI AND HOWYO CHI**

I. STATEMENT OF RELEVANT FACTS

After Plaintiff Joshua Gray (“Gray”) obtained a judgment against Defendant Imperial Pacific International (CNMI), LLC (“IPI”), the Court issued a writ of execution against IPI’s Personal Property and Plaintiff executed on this writ. On October 23, 2023, the Court issued an Order Appointing Clear Management Limited as Limited Receiver for the Sale of IPI’s Personal

1 Property (ECF No. 275, the “Order”). The Order required, *inter alia*, that “IPI shall ensure and
 2 fund the security of IPI’s Personal Property until it is sold by the Limited Receiver and delivered
 3 to the buyer. Within fourteen (14) days of the filing of the inventory list by the Receiver, IPI
 4 shall file with the Court a sworn declaration and supporting evidence demonstrating its
 5 compliance with this provision.” (*Id.* ¶ 16).

6 On November 3, 2023, Clear Management moved the Court to modify this portion of the
 7 Order to permit Clear Management to file an initial inventory list by November 10, 2023, but
 8 then to later file a supplemental inventory list on December 6, 2023, and additional lists as
 9 become necessary thereafter. (Motion for Modification, ECF No. 279).

10 On November 5, 2023, the Court issued an Order granting the motion for modification of
 11 order appointing receiver, the Court ordered, *inter alia*, “Specifically, Clear Management shall
 12 file an initial inventory list on or before November 10, 2023, which will then be subject to the
 13 procedures set forth in Paragraph B.4 of the Receivership Order— including that IPI shall have
 14 seven (7) days to file any objections to the inventory and will waive any objections by failing to
 15 do so. Clear Management shall then file a supplemental inventory list on or before December 6,
 16 2023, which shall also be subject to the procedures set forth in Paragraph B.4 of the Receivership
 17 Order, including time for objections.” (ECF No. 280).

18 On November 10, 2023, Clear Management filed the initial inventory list and stated “the
 19 Receiver will file a supplemental inventory list on or before December 6, 2023.” (ECF No. 282).

20 At the time of the filing of this Response to OSC, Clear Management has not yet
 21 complied with the Court’s specific order to file the supplemental inventory list, in spite of its
 22 own commitment to do so.

23 Around November 2023, staff from Clear Management obtained the key to the liquor
 24 storage and began conducting an inventory of the liquor. Clear Management staff informed IPI’s
 25 security guard that they had court authorization to sell IPI’s assets and that IPI must do what
 26 Clear Management asked them to do in all matters, including the liquor.
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1 After Clear Management obtained the key to the liquor vault, they began to take control
 2 of the liquor for them to conduct inventory. Clear Management did not allow any of IPI's staff
 3 and security guards to get even close to the liquor.

4 After Clear Management had the physical custody of the liquor, they did not coordinate
 5 with IPI to secure the liquor in terms when Clear Management staff would be coming and
 6 leaving, and when the liquor would be left unattended and what IPI's security guards are
 7 supposed to do when/if the liquor were left unattended.

8 On November 27, 2023, IPI was informed by Clear Management that two Macallan were
 9 missing from the casino lobby floor.

10 IPI immediately discussed with Clear Management to secure the remaining liquor. In
 11 response, Clear Management staff took control of the liquor and stored it in an office behind
 12 Tapochau Bar on the IPI gaming floor. They removed the padlock previously placed by IPI and
 13 installed their own padlock, preventing anyone from IPI to have access to the liquor. Clear
 14 Management has the only keys to the padlock where the remaining liquor were stored.

15 On January 24, 2024, after overruling IPI's request to extend the sale in order to entertain
 16 additional higher bids, Court approved a joint petition by Plaintiff and Clear Management to sell
 17 entire IPI's liquor of 5,633 bottles for \$250,316.00. (ECF No. 283-1, ECF No. 286). The average
 18 price of the liquor is \$44.44 USD per bottle.

19 On February 26, 2024, IPI was informed by Clear Management that another 17 bottles of
 20 Moutai were stolen from the storage room where Clear Management had the exclusive access to.

21 On March 12, 2024, without the benefits of knowing when the supplemental inventory
 22 list might be filed by the Limited Receiver, at the request of the counsel for Plaintiff, counsel for
 23 IPI stipulated with Plaintiff's counsel to file the declarations prior to March 12 before 10 AM
 24 Saipan time. (ECF No. 290-2, at 42). IPI did file the declarations on time per stipulation. (ECF
 25 No. 288, 289).

26 Since the closure of casino operations in March 2020, IPI has had very limited resources
 27 and no income. To maintain security at Imperial Pacific Resort, IPI has been borrowing funds to
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pay the current security guards. IPI has great difficulties in finding a lender who is willing to extend any credit to IPI to cover its ongoing operating expenses.

IPI has no fund in its bank accounts. IPI has no liquid assets other than assets which are under the control of Clear Management.

IPI is paying \$8.25 USD per hour for the security guard, it would cost at least \$47,520 USD to hire eight security guards 24/7 for 30 days. IPI has no financial resources to fund this level of security.

ARGUMENT

A. The Only Party Who Disobeyed a Specific and Definite Court Order is Clear Management.

A finding of contempt is appropriate when a party disobeys “a specific and definite court order by failure to take all reasonable steps within the party’s power to comply.” *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). See *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (“The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply.”). “The contempt ‘need not be willful,’ and there is no good faith exception to the requirement of obedience to a court order.” Id. (quoting *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987)).

“But a person should not be held in contempt if his action “appears to be based on a good faith and reasonable interpretation of the [court's order].’ *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982) (quoting *Rinehart v. Brewer*, 483 F. Supp. 165, 171 (S.D. Iowa 1980). “Substantial compliance” with the court order is a defense to civil contempt, and is not vitiated by “a few technical violations” where every reasonable effort has been made to comply. 689 F.2d at 891; see also *General Signal Corp. v. Donallco, Inc.*, 787 F.2d

1 1376, 1378-79 (9th Cir. 1986).” See *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, at
 2 695.

3 When the Court issued its Order Appointing Clear Management as the Limited Receiver,
 4 (ECF No. 275), it mandated IPI to “file with the Court a sworn declaration and supporting
 5 evidence demonstrating its compliance with this provision” within 14 days of the filing of the
 6 inventory list. It is clear that IPI’s obligation to file a sworn declaration and supporting evidence
 7 is triggered by the filing of the inventory list by the Receiver.

8 Upon the motion by Clear Management, the Court allowed Clear Management to file an
 9 initial inventory list by November 10, 2023, and a supplemental inventory list on December 6,
 10 2023, as well as additional inventory lists as necessary. (ECF No. 280). Clear Management is
 11 under a specific and definite order to file the supplemental inventory list by December 6, 2023.
 12 The Court even used the word “specifically” when it addressed Clear Management’s obligations
 13 to file the initial and supplemental reports with specific dates. (ECF No. 280 at 2, Line 14).

14 In its Motion to Modify the Order Appointing Limited Receiver (ECF No. 279), Clear
 15 Management stated it would not be possible for it to do a thorough inventory by November 6,
 16 2023, and that subject property may be spread out over multiple locations on Saipan, including
 17 some “unexpected places.”

18 On November 10, 2023, when Clear Management filed the initial inventory report, it
 19 reaffirmed its obligation to “file a supplemental inventory list on or before December 6, 2023.”

20 The modified Order did not address the timing when IPI needs to file a sworn declaration
 21 and supporting evidence to demonstrate its compliance given the fact that there might be
 22 multiple inventory lists filed by the Limited Receiver; nor the modified Order addressed whether
 23 IPI needs to file a sworn declaration and supporting evidence each time when Clear Management
 24 files an inventory list.

25 There are only twenty six (26) days between the filing of the initial inventory list and
 26 December 6, 2023, which is the scheduled filing date of the first supplemental inventory list as
 27 ordered by the Court and confirmed by Clear Management of its own filing, it is a reasonable
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1 interpretation by IPI to file the sworn declaration and supporting evidence after the filing of the
 2 first supplemental inventory list, because IPI's compliance plan would be contingent upon what
 3 and where the subject inventories are. Given the modified Order, it is unreasonable to ask IPI to
 4 provide a sworn declaration and supporting evidence immediately after the initial inventory list
 5 is filed, knowing a supplemental inventory list is due in less than twelve (12) days.

6 Should Clear Management indicate that it would not file a supplemental inventory list, or
 7 the date for the filing of a supplemental inventory list is unknown or in a distant future date, it
 8 might be reasonable to ask IPI to file the sworn declaration and supporting evidence within 14
 9 days of the filing of the initial inventory list. But that is not the case here. Notwithstanding the
 10 specific court order and its own reconfirmation, Clear Management failed to file the
 11 supplemental inventory list on or before December 6, 2023, there is no "specific and definite"
 12 court order that IPI could disobey. The only party that disobeyed a "specific and definite" court
 13 order is Clear Management.

14 **B. The Alleged Loss of the Liquor was not Due to the Security Measures Provided
 15 by IPI since Clear Management had Exclusive Control over the Liquor.**

16 Under the Order, IPI must "perform any other action reasonably requested by the Limited
 17 Receiver." (ECF No. 275, ¶15 d.)

18 For the alleged loss of two bottles of Macallan, based upon the declaration by Mr.
 19 Christopher Craney, the loss occurred between November 23, 2023, and November 27, 2023.
 20 Clear Management already took possession and exercised exclusive custody over the liquor by
 21 removing them from the liquor vault to the casino lobby. Clear Management did not allow IPI's
 22 security guards to get close to the liquor while they were "conducting inventory" and did not
 23 coordinate with the security guards on when they will be coming or leaving and when the liquor
 24 will be left unattended.

25 Therefore, the alleged loss of the two bottles of Macallan was not caused by the alleged
 26 inadequate security provided by IPI, it would make no difference how many security guards
 27 were on duty since they are not allowed to interfere with what Clear Management was doing
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1 with the liquor. To put it simply, the risk of loss is shifted to Clear Management when they took
 2 possession of the liquor and exercised exclusive custody of the liquor. That is not what the Court
 3 order envisioned.

4 For the alleged loss of Moutai, the case is even stronger. Clear Management exercised
 5 exclusive custody over the liquor by replacing the padlock on the door for the liquor storage
 6 room.

7 Mr. Craney speculated that the Moutai was stolen by unscrewing the hinge, opening the
 8 door, and then replacing the hinge.

9 A more plausible way for the Moutai to be stolen is by someone who has access to the
 10 locked storage room with a key to the changed padlock, remove the Moutai one bottle at a time.

11 It remains a mystery how the 17 bottles of Moutai were stolen from the locked storage
 12 room where Clear Management has exclusive access to, and the lock was not cut or broken (ECF
 13 No. 290-3, ¶23, Decl. of Craney), without establishing the causal link between the alleged loss of
 14 the liquor and the alleged inadequate security by IPI with clear and convincing evidences, it is a
 15 mere groundless speculation to fix the blame on IPI for the alleged loss of the 17 bottles of
 16 Moutai.

17 The cause of the loss of the liquor may never be known, to ask IPI to compensate
 18 Plaintiff for the loss of the liquor is to ask IPI to be the insurer of the loss, that is beyond the
 19 scope of the Court Order where IPI is asked to provide security only.

20 C. IPI Has Done Everything Possible to Comply with the Court Order.

21 Under the settled law, “When it becomes the duty of a court of equity to take property
 22 under its own charge through a receiver, the property becomes chargeable with the necessary
 23 expenses incurred in taking care of and saving it, including the allowance to the receiver for his
 24 services.” See *Elk Fork Oil & Gas Co. v. Foster*, 99 F. 495, *499 (4th Circuit, 1900), *Strain v.*
Palmer, 159 F. 628 (9th Cir. 1908). When a receiver is appointed, the expenses incurred in
 25 taking care of the property, such as the security costs, shall be chargeable to the subject property.
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1 Although IPI respectfully disagrees with the Court's order to fund the security of the
2 subject property, IPI has done everything possible to comply with that order by borrowing funds
3 to provide security.

4 IPI is an independent and distinct legal entity, IPI is a limited liability company formed
5 under the law of CNMI, it is responsible for its own legal obligations to the extent of its assets.
6 IPI can only fulfill its legal obligations, including complying with the Court Order, from its own
7 assets. The Court has been consistently applying this principle by denying multiple requests from
8 judgment creditors to ask IPI to provide insurance for its vehicles that were subject to writs of
9 execution.

10 A finding of contempt is appropriate when a party disobeys "a specific and definite court
11 order by failure to take all reasonable steps within the party's power to comply." *In re Dual-*
12 *Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). IPI has
13 exhausted all available assets within its control and even borrowed funds in order to comply with
14 the court order, IPI has taken all reasonable steps within its power to comply with the Court's
15 order to fund the security of the subject property. IPI reserves the right to petition the Court to
16 order the Limited Receiver and the Plaintiff to reimburse the costs for providing security, which
17 benefits the Plaintiff only.

18 The mere possibility that a third party, including the parent company of IPI, its
19 shareholders, officers, and directors may chip in to help IPI financially from time to time is not a
20 ground to find IPI in contempt if IPI is unable to convince such third party to extend a loan to
21 cover certain expenses when IPI itself cannot do so with its own assets.

22 **D. Mr. Howyo Chi Has Done Everything Within His Power to Comply with the
23 Court Order.**

24 Mr. Chi is the executive director of IPI. Mr. Chi is not personally liable for the debt of
25 IPI. To the extent IPI has taken all reasonable steps within its power to comply with the Court's
26 order to provide and fund the security of the subject property, there is no ground to hold Mr. Chi
27 personally liable for the alleged contempt.

1 **E. The Value Assigned to the Alleged Lost Liquor is Grossly Inflated.**

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On January 24, 2024, after overruling IPI's request to extend the sale in order to entertain additional higher bids, Court approved a joint petition by Plaintiff and Clear Management to sell entire IPI's liquor of 5,633 bottles for \$250,316.00. (ECF No. 283-1, ECF No. 286). The average price of the liquor is \$44.44 USD per bottle.

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It is quite remarkable for Plaintiff to take an inconsistent position at this juncture to assign \$4,499.99 to \$6,699.99 per bottle for the Macallan and \$100,000 for the 17 bottles of Moutai when the entire 5,633 bottles were sold for \$250,316.00. This request is frivolous.

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II. CONCLUSION

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For the foregoing reasons, the Court shall deny the requests made by Plaintiff in his Petition for an Order to Show Cause against IPI and Mr. Chi.

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Dated: April 16, 2024
Saipan, CNMI

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